

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

JUSTICE FOR THE NEXT)	
GENERATION, et al.,)	
)	
Plaintiffs,)	
)	
v.)	Civil Action No. 1:20-cv-00998
)	
TERRY JOHNSON, et al.,)	
)	
Defendants.)	

**DECLARATION OF MICHAEL BORNHORST IN SUPPORT OF PLAINTIFFS’
MOTION TO COMPEL GRAHAM DEFENDANTS’ COMPLIANCE WITH
RULE 34(b)(2)(B) AND TO PROVIDE COMPLETE WRITTEN DISCOVERY
RESPONSES**

DECLARATION OF MICHAEL BORNHORST

I, Michael Bornhorst, declare as follows:

1. I am counsel with the law firm Mayer Brown LLP and co-counsel for the Plaintiffs in this case. Pursuant to Local Civil Rule 7.3(e), I make this declaration in support of Plaintiffs' Motion to Compel Graham Defendants' Compliance with Rule 34(b)(2)(B) and to Provide Complete Written Discovery Responses.

2. The parties in this case exchanged initial disclosures on August 16, 2021. Plaintiffs served their common sets of interrogatories and requests for production on August 31, 2021. The Graham Defendants responded to those discovery requests on September 30, 2021.

3. In total, the Graham Defendants have made four document productions to date: October 11, 2021 (1,987 documents); November 11, 2021 (308 documents); February 11, 2022 (848 documents), and February 25, 2022 (38 documents). In total, the Graham Defendants have produced 3,181 documents.¹

4. The parties have had numerous exchanges regarding the adequacy of discovery responses, as detailed below.

5. It is my understanding that on October 19, 2021, the parties held a two-hour telephone conference to discuss, inter alia, issues with the completeness of the Graham Defendants' discovery responses.

6. During this telephone conference and discussion in a subsequent follow-up letter, the Graham Defendants asked Plaintiffs to evaluate the adequacy of their discovery responses in light of Defendants' ongoing document production.

7. On February 21, 2022, Plaintiffs again voiced concern regarding the completeness of the Graham Defendants' document production. Thereafter on February 25, 2022, the parties met and conferred via video conference in order to resolve these issues. I participated in that meet-and-confer, along with co-counsel Elizabeth Haddix and

¹ The Graham Defendants have re-produced certain documents due to technical issues with load files and lack of compliance with the Court's ESI Protocol.

Jennifer Nwachukwu from the Lawyers' Committee for Civil Rights Under Law, and Jaclyn Maffetore from the American Civil Liberties Union of North Carolina. Attorneys Anthony Biller and Adam Banks from Envisage Law, participated for the Graham Defendants. Attorney William Hill from Frazier, Hill & Fury, RLLP and Paul Gessner from Cranfill Sumner LLP attended for the Alamance County Defendants. During this meet-and-confer the Graham Defendants agreed to remedy certain deficiencies by producing additional documents or, where needed, replacement load files for previous productions. Areas where the parties were unable to reach a resolution are identified below. In addition, with the exception of interrogatory number 5, the Graham Defendants stated that they would not agree to supplement their interrogatory responses.

8. On February 25, 2022, shortly after the meet-and-confer, the Graham Defendants produced 38 documents. However, during the February 25, 2022, meet and confer, counsel for the Graham Defendants indicated that one or more additional document productions were still forthcoming as the Graham Defendants had not yet completed their collection of social media data. As of this filing, the social media data from the Graham Defendants has not yet been produced.

9. During the February 25, 2022, meet and confer, the Graham Defendants stated that they would not agree to collect and produce data from personal email accounts for any Graham Defendant. However, materials in previous productions from the Graham Defendants show that individuals within GPD appear to have used their personal email accounts to send or receive responsive communications. For instance, the document identified with the Bates Number GPD0013071 shows that Defendant Velez used a personal "att.net" account to transmit a "GPD Incident Summary," and the document identified with the Bates Number GPD0013092 shows a GPD Officer sending documents related to the March to his personal "yahoo" email account.

10. Many documents in the Graham Defendants' production are missing relevant metadata fields, or those fields appear to have been altered. For instance, a number of documents indicate their metadata was altered when they were moved from the folder

where they were kept in the regular course of business to a “DiscoveryHold” folder. These documents include GPD0013031, GPD0013034, and GPD0013044.

11. Attached hereto as Exhibit 1 is a true and accurate copy of a February 21, 2022 letter to Defense counsel regarding the parties’ Rule 26(f) Report.

12. Attached hereto as Exhibit 2 is a true and accurate copy of a February 21, 2022 letter to Defense counsel regarding deficiencies in Defendants’ discovery responses and initial disclosures.

13. Attached hereto as Exhibit 3 is a true and accurate copy of Plaintiffs’ First Common Set of Interrogatories to All Defendants, dated August 31, 2021.

14. Attached hereto as Exhibit 4 is a true and accurate copy of Plaintiffs’ First Common Set of Requests for Production of Documents and Things to All Defendants, dated August 31, 2021.

15. Attached hereto as Exhibit 5 is a true and accurate copy of the Graham Defendants’ Responses to Plaintiffs’ First Set of Requests for Interrogatories and Production of Documents, dated September 30, 2021.

16. Attached hereto as Exhibit 6 is a true and accurate copy of an October 23, 2021 letter to Defense counsel.

17. Attached hereto as Exhibit 7 is intentionally left blank.

18. Attached hereto as Exhibit 8 is a true and accurate copy of a July 15, 2021 article entitled *Graham Police Chief Admits Officers’ Unprofessionalism; City Denies Wrongdoing*.

19. Attached hereto as Exhibit 9 is a true and accurate copy of a document bearing the Bates numbers GPD0003086-88.

20. Attached hereto as Exhibit 10 is intentionally left blank.

21. Attached hereto as Exhibit 11 is a true and accurate copy of a document bearing the Bates numbers GPD0010214-31.

22. Attached hereto as Exhibit 12 is a true and accurate copy of a document bearing the Bates number Plaintiffs_0003217, which shows a Facebook Messenger chain

involving Defendant Cole discussing the March to the Polls event.

23. Attached hereto as Exhibit 13 is a true and accurate copy of a document bearing the Bates number Plaintiffs_0003480, which shows a Facebook Messenger chain involving Defendant Cole.

24. Attached hereto as Exhibit 14 is a true and accurate copy of a document bearing the Bates numbers GPD0013092-93. Because this document involves a non-defendant law enforcement officer, Plaintiffs have redacted the officer's personal email address and telephone number.

25. Attached hereto as Exhibit 15 is a true and accurate copy of a document bearing the Bates number GPD0013020. The "source" metadata associated with this document indicates that it came from the folder "(Primary)/Recoverable Items/Deletions."

26. Attached hereto as Exhibit 16 is a true and accurate copy of a document bearing the Bates numbers GPD0014148-52.

27. Attached hereto as Exhibit 17 is a true and accurate copy of a document that was produced with the identifying Bates number AL00086. Because the Alamance County Sheriff's Office did not produce its first document production with Bates numbers on each produced page, Plaintiffs cite to the internal page numbers of the document.

28. Attached hereto as Exhibit 18 is a true and accurate copy of a document that was produced with the identifying Bates number AL01251. Because the Alamance County Sheriff's Office did not produce its first document production with Bates numbers on each produced page, Plaintiffs cite to the internal page numbers of the document.

29. Attached hereto as Exhibit 19 is a true and accurate copy of a document bearing the Bates numbers GPD0013648-59.

30. Attached hereto as Exhibit 20 is a true and accurate copy of a document bearing the Bates numbers GPD0013719-29.

31. Attached hereto as Exhibit 21 is a true and accurate copy of a document bearing the Bates numbers GPD0013932-42.

32. Attached hereto as Exhibit 22 is a true and accurate copy of a document

bearing the Bates numbers GPD0014052-53.

I declare under penalty of perjury under the laws of the United States of America that the preceding declaration is true and correct.

Respectfully submitted, this the 4th day of March, 2022.

/s/Michael Bornhorst
Michael Bornhorst
Counsel to Plaintiffs